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C O N F I D E N T I A L BOGOTA 003006

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E.O. 12958: DECL: 08/16/2017  
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SUBJECT: CONSTITUTIONAL COURT LIMITS DISCRETIONARY  
AUTHORITY TO DISMISS SECURITY FORCES

Classified By: Political Counselor John S. Creamer. Reason: 1.4(b,d)

¶1. (U) On August 11, the Constitutional Court announced a ruling limiting the Ministry of Defense's (MOD) discretionary authority to dismiss police and military personnel without cause. In its ruling on the case of a career navy infantry officer fired after nine years of service, the court ordered the MOD to provide clear reasons for his dismissal. The officer had provided the court with evidence of positive evaluations by his commanders, including one month before his dismissal. The court ruled that the discretionary authority was not meant to be "arbitrary" nor give "unlimited powers" to the state. The court also ruled that the Ministry must provide the individual subject to dismissal an opportunity to present his defense. The ruling also applies to the Department of Administrative Security (intelligence agency) and INPEC (prison officials).

¶2. (C) MOD officials said the ruling will lead to the loss of a valuable tool used to purge the security forces of corrupt personnel, human rights abusers, and other criminal elements without waiting for the results of often lengthy, inconclusive administrative or criminal investigations. MOD Human Rights Unit Director Colonel Juan Carlos Gomez told us the decision has raised "serious concerns" and would negatively impact efforts to root out corruption and human rights abuses. He acknowledged that human rights groups claim the MOD used the discretionary authority to head off formal investigations of wrongdoing, but noted that application of the authority did not preclude separate criminal or disciplinary actions. Some military have criticized the MOD for allegedly applying the authority to punish personal enemies. Gomez said the MOD will not challenge the court's decision.

¶3. (SBU) MOD statistics show that between 2004 and 2006, it dismissed 150 Army officers and nearly 200 non-commissioned officers under the discretionary authority. In 2004 alone, the MOD fired 300 professional soldiers. Post's Human Rights Certification includes information that in 2007, the commander of the Colombian Armed Forces used his discretionary authority to remove 282 members of the military (59 officers and 223 non-commissioned officers). In the first four months of 2008, the commander used his discretionary authority to remove 55 members of the military (8 officers and 47 non-commissioned officers). The court said its ruling will not be retroactive, but the MOD worries the decision will lead to the reinstatement of corrupt personnel as well as potentially costly civil suits brought by dismissed military personnel seeking damages.

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